

DETAILED ACTION

Acknowledgement is made of receipt and entry to the amendment filed on 04/25/2011.

Claims 1, 3-7, 10 and 12-15 have been examined on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 10 and 12-15 stands rejected under 35 USC 102(b) as being anticipated by the admitted state of the art for the reasons set forth in the previous office action.

Applicant claims a method for the treatment of the skin (i.e. a skin disorder such as skin inflammatory conditions) comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of a plant extract wherein the plant extract is obtained from extracting the fruit and/or seed of the *Buchholzia coriacea* with a solvent such as water.

As readily admitted by Applicant, a composition comprising a water extract solution (please note that water is an art-recognized pharmaceutical auxilliary/additive) from the seeds of the *Buchholzia coriacea* has effectively been used in the prior art to treat earaches (which would inherently be a skin inflammatory condition) via topical

application thereto. In addition, as readily admitted by Applicant, a composition comprising a fruit extract from *Buchholzia coriacea* (e.g., in the form of a fruit pulp) has been effectively used in the prior art to treat back pain (please also note that back pain is commonly associated with skin inflammation) via topically massaging such a fruit extract thereto (see, e.g., last paragraph on page 2 of the instant specification). Also, please note that the instantly claimed *in vivo* functional effects (if not expressly admitted) would be inherent upon such administration/application.

Therefore, the admitted state of the art is deemed to anticipate the claimed invention.

Applicant's arguments have been carefully considered but are not deemed persuasive. Applicant argues that such disclosures do not teach or suggest the presently claimed invention. In fact, Applicants submit that earaches and back pain are unrelated to providing an anti-aging, anti-wrinkle, rejuvenating, and/or revitalizing effect on stressed or tired skin. However, the Examiner maintains that the instantly claimed *in vivo* functional effects (if not expressly admitted) would be inherent upon such administration/application of the same claimed composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 10 and 12-15 stands as being anticipated by the admitted state of the art in view and Doi et al. (JP 411322630A, see entire article) for the same reasons set forth in the previous office action.

Applicant claims a composition and/or method comprising the steps of administering to a patient in need thereof a composition comprising an effective amount of a plant extract wherein the plant extract is obtained from extracting the fruit and/or seed of the *Buchholzia coriacea* with a solvent such as water and other claimed active ingredients therein (i.e. an additional additive and/or auxiliary) to be administered (i.e. orally or topically in claimed forms) in effective amounts to a patient in need thereof for the treatment of skin disorders (i.e. a skin disorder such as skin inflammatory conditions).

As readily admitted by Applicant, a composition comprising a water extract from the seeds of the *Buchholzia coriacea* has effectively been used in the prior art to treat earaches (which would inherently be a skin inflammatory condition) via topical application thereto. In addition, as readily admitted by Applicant, a composition comprising a fruit extract from *Buchholzia coriacea* (e.g., in the form of a fruit pulp) has been effectively used in the prior art to treat back pain (please also note that back pain is commonly associated with skin inflammation) via topically massaging such a fruit extract thereto (see, e.g., last paragraph on page 2 of the instant specification). Also, please note that the instantly claimed *in vivo* functional effects (if not expressly admitted) would be intrinsic upon such administration/application. Applicant's

specification, however, does not teach within its composition and/or method to include an additional claimed skin additives therein to be administered topically on the skin in effective amounts to a patient in need thereof for the treatment of skin inflammatory conditions.

Doi beneficially teaches well known skin additives such as antimicrobial agents are useful within compositions for the treatment of skin inflammatory conditions (see, e.g. entire article).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the therapeutic *Buchholzia coriacea* seed and/or fruit extract preparations admittedly known in the prior state to include an additional well known skin additive/auxiliary such as those instantly claimed, including an antimicrobial agent as taught by Doi because the above combined cited references as a whole would create the claimed composition and/or method comprising the steps of administering to a patient in need of a composition comprising an effective amount of a plant extract wherein the plant extract is obtained from extracting the fruit and/or seed of the *Buchholzia coriacea* with a solvent such as water as well as to include other well known skin additives therein to be administered topically on the skin in effective amounts to a patient in need thereof for the treatment of skin inflammatory conditions. The result-effective adjustment of conventional working conditions (e.g., incorporating one or more conventional skin additives and/or auxiliaries such as those instantly claimed to such a topical therapeutic composition, determining a suitable amount range thereof, and/or treating a particular type of back pain such as that commonly caused by inflammation -

including arthritic back pain) is deemed a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Applicant's arguments have been carefully considered but are not deemed persuasive. Applicant argues that with respect to the Examiner's obviousness rejection of the claims, Applicants respectfully submit that Doi et al. do not cure the deficiency of the allegedly admitted state of the art and Doi is silent with respect to *Buchholzia coriacea* extracts providing treatment for conditions such as anti-aging and anti-wrinkle etc.. However, the Examiner maintains that the cited reference of Doi was cited to remedy the deficiency of the admitted stated of the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the therapeutic *Buchholzia coriacea* seed and/or fruit extract preparations admittedly known in the prior state to include an additional well known skin additive/auxilliary such as those instantly claimed, including an antimicrobial agent as taught by Doi because the above combined cited references as a whole would create the claimed composition and/or method comprising the steps of administering to a patient in need of a composition comprising an effective amount of a plant extract wherein the plant extract is obtained from extracting the fruit and/or seed of the *Buchholzia coriacea* with a solvent such as water as well as to include other well known skin additives therein to be

administered topically on the skin in effective amounts to a patient in need thereof for the treatment of skin inflammatory conditions such as the conditions recited in independent claim 10.

No claims are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RANDALL WINSTON whose telephone number is (571)272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RW

/Christopher R Tate/
Primary Examiner, Art Unit 1655